

Chapter 49

WETLANDS AND COASTAL PRIMARY SAND DUNES*

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*Editor's note—Ord. No. 31,846, § 1, adopted July 20, 1982, added Ch. 49, §§ 49-1—49-33, to the Code. In order to preserve Code format, the editor has added nonsubstantive reserved §§ 49-01—49-09, styled "Article I. In General" and has renumbered as Arts. II and III what the ordinance had enacted as I and II, but no changes were made in section numbering.

Cross references—Department of community improvement, § 2-349 et seq.; boats, docks, wharves and waterways, Ch. 9; erosion and sedimentation control, Ch. 15; subdivisions, Ch. 42.5; trees and other vegetation, Ch. 45; zoning, App. A.

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ARTICLE I. IN GENERAL

Secs. 49-01–49-09. Reserved.

ARTICLE II. WETLANDS*

Sec. 49-1. Intent.

The council of the city, acting pursuant to chapter 13 of title 28.2 of the Code of Virginia, for purposes of fulfilling the policy standards set forth in such chapter, adopts this article regulating the use and development of wetlands.
(Ord. No. 37,012, § 1, 9-29-92)

Sec. 49-2. Definitions.

As used in this article, unless the context requires a different meaning:

Commission means the Virginia Marine Resources Commission.

Commissioner means the Commissioner of Marine Resources.

Governmental activity means any of the services provided by the commonwealth or the city to its citizens for the purpose of maintaining public facilities, including but not limited to such services as constructing, repairing and maintaining roads; providing sewage facilities and street lights; supplying and treating water; and constructing public buildings.

Nonvegetated wetlands means unvegetated lands lying contiguous to mean low water and between mean low water and mean high water, including those unvegetated areas of back bay and its tributaries and the north landing river and its tributaries subject to flooding by normal and wind tides but not hurricane or tropical storm tides.

Person means any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity.

***Editor's note**—Section 1 of Ord. No. 37,012, adopted Sept. 29, 1992, amended Ch. 49, Art. II, §§ 49-1–49-17, to read as herein set out. Former Ch. 49, Art. II pertained to similar subject matter and derived from Ord. No. 31,846, § 1, adopted July 20, 1982; Ord. No. 35,629, § 1, adopted July 5, 1989; Ord. No. 35,691, § 1, adopted Aug. 15, 1989 and Ord. No. 35,692, § 1, adopted Aug. 15, 1989.

Vegetated wetlands means lands lying between and contiguous to mean low water and an elevation above mean low water equal to the factor one and one-half times the mean tide range at the site of the proposed project in the county, city, or town in question, and upon which is growing any of the following species: saltmarsh cord grass (*Spartina alterniflora*), saltmeadow hay (*Spartina patens*), saltgrass (*Distichlis spicata*), black needlerush (*Juncus roemerianus*), saltwort (*Salicornia* spp.), sea lavender (*Limonium* spp.), marsh elder (*Iva frutescens*), groundsel bush (*Baccharis halimifolia*), wax myrtle (*Myrica* sp.), sea oxeye (*Borrchia frutescens*), arrow arum (*Peltandra virginica*), pickerelweed (*Pontederia cordata*), big cordgrass (*Spartina cynosuroides*), rice cutgrass (*Leersia oryzoides*), wildrice (*Zizania aquatica*), bulrush (*Scirpus validus*), spikerush (*Eleocharis* sp.), sea rocket (*Cakile edentula*), southern wildrice (*Zizaniopsis miliacea*), cattail (*Typha* spp.), three-square (*Scirpus* spp.), buttonbush (*Cephalanthus occidentalis*), bald cypress (*Taxodium distichum*), black gum (*Nyssa sylvatica*), tupelo (*Nyssa aquatica*), dock (*Rumex* spp.), yellow pond lily (*Nuphar* sp.), marsh fleabane (*Pluchea purpurascens*), royal fern (*Osmunda regalis*), marsh hibiscus (*Hibiscus moscheutos*), beggar's tick (*Bidens* sp.), smartweed (*Polygonum* sp.), arrowhead (*Sagittaria* spp.), sweet flag (*Acorus calamus*), water hemp (*Amaranthus cannabinus*), reed grass (*Phragmites communis*), or switch grass (*Panicum virgatum*).

Wetlands means both vegetated and nonvegetated wetlands.

(Ord. No. 37,012, § 1, 9-29-92)

Sec. 49-3. Uses and activities on wetlands which are permitted.

The following uses of and activities in wetlands are authorized if otherwise permitted by law:

- (1) The construction and maintenance of non-commercial catwalks, piers, boathouses, boat shelters, fences, duckblinds, wildlife management shelters, footbridges, observation decks and shelters and other similar structures, provided that such structures are so constructed on pilings as to permit the reasonably unobstructed flow of the tide

and preserve the natural contour of the wetlands;

- (2) The cultivation and harvesting of shellfish, and worms for bait;
- (3) Noncommercial outdoor recreational activities, including hiking, boating, trapping, hunting, fishing, shell fishing, horseback riding, swimming, skeet and trap shooting, and shooting on shooting preserves, provided that no structure shall be constructed except as permitted in subdivision 1 of this section;
- (4) Other outdoor recreational activities, provided they do not impair the natural functions or alter the natural contour of the wetlands;
- (5) Grazing, haying, and cultivating and harvesting agricultural, forestry or horticultural products;
- (6) Conservation, repletion and research activities of the commission, the Virginia Institute of Marine Science, the Department of Game and Inland Fisheries and other conservation-related agencies;
- (7) The construction or maintenance of aids to navigation which are authorized by governmental authority;
- (8) Emergency measures decreed by any duly appointed health officer of a governmental subdivision acting to protect the public health;
- (9) The normal maintenance and repair of, or addition to, presently existing roads, highways, railroad beds, or facilities abutting on or crossing wetlands, provided that no waterway is altered and no additional wetlands are covered;
- (10) Governmental activity in wetlands owned or leased by the Commonwealth or a political subdivision thereof; and
- (11) The normal maintenance of manmade drainage ditches, provided that no additional wetlands are covered. This subdivision does not authorize the construction of any drainage ditch.

(Ord. No. 37,012, § 1, 9-29-92)

Sec. 49-4. Wetlands board—Creation, appointment and terms.

There is hereby created the Norfolk Wetlands Board, which shall consist of seven (7) residents of the city, who shall be appointed by the council. Their terms of office shall be for five (5) years, except that original appointments shall be made for such terms that the term of one member shall expire each year. The chairman of the board shall notify the council at least thirty (30) days in advance of the expiration of any term of office and shall also notify the council if any vacancy occurs. Appointments to fill vacancies shall be for the unexpired portion of the term. Members may serve successive terms. Members of the board shall hold no other public office in the city except that they may be members of the planning commission, directors of soil and water conservation boards, or local erosion commissions or the board of zoning appeals. A member whose term expires shall continue to serve until his successor is appointed and qualified. When such members are appointed their terms of appointment shall be coterminous with their membership on the planning commission, soil and water conservation boards, erosion commission or the board of zoning appeals.

(Ord. No. 37,012, § 1, 9-29-92)

Sec. 49-5. Same—Officers, meetings, rules, records and reports.

The board shall elect annually from its membership a chairman and such other officers as it deems necessary who shall serve one-year terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall be not less than four (4) members of the board. The board may make, alter and rescind rules and forms for its procedures, consistent with ordinances of the city and general laws of the commonwealth. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the council at least once a year, and a copy of its report to the commission. Upon a hearing with at least fifteen (15) days' notice thereof, any board member may be removed for malfeasance, misfeasance or nonfeasance, in office, or for other just cause, by the council of the city.

(Ord. No. 37,012, § 1, 9-29-92)

Sec. 49-5.1. Policy.

In fulfilling its responsibilities under this article, the board shall preserve and prevent the despoliation and destruction of wetlands within the city while accommodating necessary economic development in a manner consistent with wetlands preservation.

(Ord. No. 37,012, § 1, 9-29-92)

Sec. 49-6. Application for permit.

(a) Any person who desires to use or develop any vegetated wetland and any nonvegetated wetland, within this city, other than for those activities specified in section 49-3 above, shall first file an application for a permit directly with the wetlands board.

(b) An application shall include the following: The name and address of the applicant; a detailed description of the proposed activity and a map, drawn to an appropriate and uniform scale, showing the area of wetland directly affected, with the location of the proposed work thereon, indicating the area of existing and proposed fill and excavation, especially the location, width, depth and length of any proposed channel and the disposal area; all existing and proposed structures; sewage collection and treatment facilities, utility installations, roadways, and other related appurtenances or facilities, including those on adjacent uplands, and the type of equipment to be used and the means of equipment access to the activity site; the names and addresses of owners of record of adjacent land and known claimants of water rights in or adjacent to the wetland of whom the applicant has notice; an estimate of cost; the primary purpose of the project; any secondary purposes of the project, including further projects; the public benefit to be derived from the proposed projects; a complete description of measures to be taken during and after the alteration to reduce detrimental off-site effects; the completion date of the proposed work, project, or structure and such additional materials and documentation as the wetlands board may deem necessary.

(c) The following nonrefundable wetlands permit fees for the use or development of any wetlands within the city shall accompany each specified application for a permit:

Noncommercial	\$125.00
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Commercial	250.00
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Noncommercial (after the fact) ...	225.00
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Commercial (after the fact)	350.00
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The aforementioned fees include the cost of advertising for the public hearing.

(Ord. No. 37,012, § 1, 9-29-92; Ord. No. 37,232, § 1, 5-18-93)

Sec. 49-7. Public inspection of applications, maps, etc.

All applications, maps and documents relating to the use or development of wetlands referred to in section 49-6 shall be open for public inspection at the office of the bureau of environmental services in the department of city planning and codes administration.

(Ord. No. 37,012, § 1, 9-29-92)

Sec. 49-8. Public hearing procedures.

Not later than sixty (60) days after receipt of a complete application, the wetlands board shall hold a public hearing on such application. The applicant, the council, the commissioner, the owner of record of any land adjacent to the wetlands in question, known claimants of water rights in or adjacent to the wetlands in question, the Virginia Institute of Marine Science, the department of game and inland fisheries, the water control board, the department of highways and transportation, and governmental agencies expressing an interest therein shall be notified by the board of the hearing by mail not less than twenty (20) days prior to the date set for the hearing. The wetlands board shall also cause notice of such hearing to be published at least once a week for two (2) weeks prior to such hearing in a newspaper having a general circulation in the city.

(Ord. No. 37,012, § 1, 9-29-92; Ord. No. 37,233, § 1, 5-18-93)

Sec. 49-9. Action of the board.

In acting on any application for a permit, the board shall grant the application upon the concurring vote of four (4) members. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may appear and be heard

at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The board shall make a record of the proceeding, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings and decision of the board, and the rationale for the decision. The board shall make its determination within thirty (30) days from the hearing. If the board fails to act within such time, the application shall be deemed approved. Within forty-eight (48) hours of its determination, the board shall notify the applicant and the commissioner of such determination and if the board has not made a determination it shall notify the applicant and the commission that thirty (30) days has passed and that the application is deemed approved. For purposes of this section, "act" means taking a vote on the application. If the application receives less than four (4) affirmative votes, the permit shall be denied. If the board's decision is reviewed or appealed, then the board shall transmit the record of its hearing to the commissioner. Upon a final decision by the commission, the record shall be returned to the board. The record shall be open for inspection at the office of the bureau of environmental services in the department of city planning and codes administration.
(Ord. No. 37,012, § 1, 9-29-92)

Sec. 49-10. Bonding requirements.

The board may require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it securing to the commonwealth compliance with the conditions and limitations set forth in the permit. The board may, after hearing as provided herein, suspend or revoke a permit if the board finds that the applicant has failed to comply with any of the conditions or limitations set forth in the permit or has exceeded the scope of work as set forth in the application. The board, after hearing, may suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application.
(Ord. No. 37,012, § 1, 9-29-92)

Sec. 49-11. Review procedure.

(a) In deciding whether to grant, grant in modified form or deny a permit, the board shall consider the following:

- (1) The testimony of any person in support of or in opposition to the permit application;
- (2) The impact of the proposed development on the public health, safety, and welfare; and
- (3) The proposed development's conformance with standards prescribed in section 28.2-1308 of the Code of Virginia and guidelines promulgated pursuant to section 28.2-1301 of the Code of Virginia.

(b) The board shall grant the permit if all of the following criteria are met:

- (1) The anticipated public and private benefit of the proposed activity exceeds its anticipated public and private detriment.
- (2) The proposed development conforms with the standards prescribed in section 28.2-1308 of the Code of Virginia and guidelines promulgated pursuant to section 28.2-1301 of the Code of Virginia.
- (3) The proposed activity does not violate the purposes and intent of this article or chapter 13 (§ 28.2-1300 et seq.) of title 28.2 of the Code of Virginia.

(c) If the board finds that any of the criteria listed in subsection (b) of this section are not met, the board shall deny the permit application but allow the applicant to resubmit the application in modified form.

(Ord. No. 37,012, § 1, 9-29-92)

Sec. 49-12. Permit; form.

The permit shall be in writing, signed by the chairman of the board or his designated representative, and notarized. A copy of the permit shall be transmitted to the commissioner.

(Ord. No. 37,012, § 1, 9-29-92; Ord. No. 37,780, § 1, 10-11-94)

Sec. 49-13. Expiration date and extensions.

No permit shall be granted without an expiration date, and the board, in the exercise of its

discretion, shall designate an expiration date for completion of such work specified in the permit from the date the board granted such permit. The board, however, may, upon proper application therefor, grant extensions.
(Ord. No. 37,012, § 1, 9-29-92)

Sec. 49-14. Permits; effect on zoning.

No permit granted by the board shall affect in any way the applicable zoning and land use ordinances of the city, or the right of any person to seek compensation for any injury in fact incurred by him because of the proposed activity.
(Ord. No. 37,012, § 1, 9-29-92)

Sec. 49-15. Investigations and prosecutions.

The wetlands board shall have the authority to investigate all projects whether proposed or ongoing which alter wetlands located within the city. The wetlands board shall have the power to prosecute all violations of any order, rule or regulation of the board, or any violation of any provision of chapter 13 of title 28.2 of the Code of Virginia or of this article.
(Ord. No. 37,012, § 1, 9-29-92)

Sec. 49-16. Violation of orders, rules and regulations.

Any person who knowingly, intentionally, negligently or continually violates any order, rule or regulation of the commission or of the wetlands board or violates any provision of chapter 13 of title 28.2 of the Code of Virginia or of the provisions contained in this article, or any provision of a permit granted by the wetlands board or the commission pursuant to chapter 13 of title 28.2 of the Code of Virginia or this article shall be guilty of a class 1 misdemeanor. Following a conviction, every day the violation continues shall be deemed a separate offense.
(Ord. No. 37,012, § 1, 9-29-92)

Sec. 49-17. Injunctions.

In addition to and notwithstanding the provisions of chapter 13 of title 28.2 of the Code of Virginia and the provisions of section 49-16, upon petition of the wetlands board to the circuit court of the city, the court may enjoin such unlawful act

and may order the person so acting unlawfully to take such steps as are necessary to restore, protect and preserve the wetlands involved.
(Ord. No. 37,012, § 1, 9-29-92)

ARTICLE III. COASTAL PRIMARY SAND DUNES*

Sec. 49-18. Intent.

The council of the city acting pursuant to chapter 14 of title 28.2 of the Code of Virginia, for purposes of fulfilling the policy standards set forth in such chapter, adopts this article regulating the use and development of coastal primary sand dunes. Whenever coastal primary sand dunes are referred to in this article, such references shall also include beaches.
(Ord. No. 37,012, § 1, 9-29-92)

Sec. 49-19. Definitions.

As used in this article, unless the context requires a different meaning:

Beach means the shoreline zone comprised of unconsolidated sandy material upon which there is a mutual interaction of the forces of erosion, sediment transport and deposition that extends from the low water line landward to where there is a marked change in either material composition or physiographic form such as a dune, bluff, or marsh, or where no such change can be identified, to the line of woody vegetation (usually the effective limit of stormwaves), or the nearest impermeable manmade structure, such as a bulkhead, revetment, or paved road.

Coastal primary sand dune or *dune* means a mound of unconsolidated sandy soil which is contiguous to mean high water, whose landward and lateral limits are marked by a change in grade from ten (10) percent or greater to less than ten (10) percent, and upon which is growing any of the

*Editor's note—Section 1 of Ord. No. 37,013, adopted Sept. 29, 1992, amended Ch. 49, Art. III, §§ 49-18—49-33, to read as herein set out. Former Ch. 49, Art. III, pertained to similar subject matter and derived from Ord. No. 31,846, § 1, adopted July 20, 1982; Ord. No. 32,971, §§ 1, 2, adopted June 26, 1984; Ord. No. 35,629, § 1, adopted July 5, 1989 and Ord. No. 35,690, §§ 1—3, adopted Aug. 15, 1989.

following species: American beach grass (*Ammophilla breviligulata*); beach heather (*Hudsonia tometosa*) dune bean (*Strophostylis* spp.); dusty miller (*Artemisia stelleriana*); saltmeadow hay (*Spartina patens*); seabeach sandwort (*Arenaria peploides*); sea oats (*Uniola paniculata*); sea rocket (*Cakile edentula*); seaside goldenrod (*Solidago sempervirens*); and short dune grass (*Panicum ararum*). For purposes of this ordinance, "coastal primary sand dune" shall not include any mound of sand, sandy soil, or dredge spill deposited by any person for the purpose of temporary storage.

Commission means the Virginia Marine Resources Commission.

Commissioner means the Commissioner of Marine Resources.

Governmental activity means any of the services provided by the Commonwealth or the city to its citizens for the purpose of maintaining public facilities, including but not limited to, such services as constructing, repairing, and maintaining roads; providing street lights and sewage facilities; supplying and treating water; and constructing public buildings.

Person means any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity.
(Ord. No. 37,012, § 1, 9-29-92)

Sec. 49-20. Uses and activities on coastal primary sand dunes which are permitted.

The following uses of and activities in dunes are authorized if otherwise permitted by law:

- (1) The construction and maintenance of non-commercial walkways which do not alter the contour of the coastal primary sand dune;
- (2) The construction and maintenance of observation platforms which are not an integral part of any dwelling and which do not alter the contour of the coastal primary sand dune;
- (3) The planting of beach grasses or other vegetation for the purpose of stabilizing coastal primary sand dunes;

- (4) The placement of sand fences or other material on or adjacent to coastal primary sand dunes for the purpose of stabilizing such features, except that this provision shall not be interpreted to authorize the placement of any material which presents a public health or safety hazard;
- (5) Sand replenishment activities of any private or public concern, provided no sand shall be removed from any coastal primary sand dune unless authorized by lawful permit;
- (6) The normal maintenance of any groin, jetty, riprap, bulkhead, or other structure designed to control beach erosion which may abut a coastal primary sand dune;
- (7) The normal maintenance or repair of existing roads, highways railroad beds, and facilities of the United States, this Commonwealth or any of its counties or cities, or of any person, provided no coastal primary sand dunes are altered;
- (8) Outdoor recreational activities, provided the activities do not alter the natural contour of the coastal primary sand dune or destroy the vegetation growing thereon;
- (9) The conservation and research activities of the Commission, Virginia Institute of Marine Science, Department of Game and Inland Fisheries, and other conservation-related agencies;
- (10) The construction and maintenance of aids to navigation which are authorized by governmental authority;
- (11) Activities pursuant to any emergency declaration by the governing body of any local government or the Governor of the Commonwealth or any public health officer for the purposes of protecting the public health and safety; and
- (12) Governmental activity in coastal primary sand dunes owned or leased by the Commonwealth or a political subdivision thereof.

(Ord. No. 37,012, § 1, 9-29-92)

Sec. 49-21. Board's duties.

The wetlands board established in section 49-4 of this Code shall be the processing board for all applications for permits to use or alter any coastal primary sand dune in the city.
(Ord. No. 37,012, § 1, 9-29-92)

Sec. 49-21.1. Policy.

In fulfilling its responsibilities under this article, the board shall present and protect coastal primary sand dunes and beaches and prevent their despoliation and destruction. However, whenever practical, the board shall accommodate necessary economic development in a manner consistent with the protection of these features.
(Ord. No. 37,012, § 1, 9-29-92)

Sec. 49-22. Application for permit.

(a) Any person who desires to use or alter any coastal primary sand dune within this city, other than for those activities specified in section 49-20 above, shall first file an application for a permit directly with the wetlands board.

(b) An application shall include the following: The name and address of the applicant; a detailed description of the proposed activity and a map, drawn to an appropriate and uniform scale, showing the area of coastal primary sand dune directly affected, with the location of the proposed work thereon, indicating the area of existing and proposed fill and excavation, especially the location, width, depth and length of any proposed channel and the disposal area; all existing and proposed structures; sewage collection and treatment facilities, utility installations, roadways, and other related appurtenances or facilities, including those on adjacent uplands, and the type of equipment to be used and the means of equipment access to the activity site; the names and addresses of owners of record of adjacent land and known claimants of water rights in or adjacent to the coastal primary sand dune of whom the applicant has notice; an estimate of cost; the primary purpose of the project; any secondary purposes of the project, including further projects; the public benefit to be derived from the proposed project; a complete description of measures to be taken during and after the alteration to reduce detrimental off-site effects; the

completion date of the proposed work, project, or structure and such additional materials and documentation as the wetlands board may deem necessary.

(c) The following nonrefundable sand dune permit fees for the use or development of coastal primary sand dunes within the city shall accompany each specified application for a permit:

Noncommercial	\$125.00
Commercial	250.00
Noncommercial (after the fact) ...	225.00
Commercial (after the fact)	350.00

The aforementioned fees include the cost of advertising for the public hearing. No person shall be required to file two (2) separate applications for permits if the project to be undertaken involves the use and development of wetlands and coastal primary sand dunes. The fee that accompanies the one application shall be as set forth in section 49-6(c).
(Ord. No. 37,012, § 1, 9-29-92; Ord. No. 37,234, § 1, 5-18-93)

Sec. 49-23. Public inspection of applications, maps, etc.

All applications, maps and documents relating to the permits referred to in section 49-22 shall be open for public inspection at the office of the bureau of environmental services in the department of city planning and codes administration.
(Ord. No. 37,012, § 1, 9-29-92)

Sec. 49-24. Public hearing procedure.

Not later than sixty (60) days after receipt of a complete application, the wetlands board shall hold a public hearing on such application. The applicant, the council, the commissioner, the owner of record of any land adjacent to the coastal primary sand dunes in question, known claimants of water rights in or adjacent to the coastal primary sand dunes in question, the Virginia Institute of Marine Science, the department of game and inland fisheries, water control board, the department of highways and transportation, and governmental agencies expressing an interest therein shall be notified by the board of the hearing by mail not

less than twenty (20) days prior to the date set for the hearing. The wetlands board shall also cause notice of such hearing to be published at least once a week for two (2) weeks prior to such hearing in a newspaper having a general circulation in the city.

(Ord. No. 37,012, § 1, 9-29-92; Ord. No. 37,235, § 1, 5-18-93)

Sec. 49-25. Action of board.

In acting on any application for a permit, the board shall grant the application upon the concurring vote of four (4) members. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. Any person may appear and be heard at the public hearing. Each witness at the hearing may submit a concise written statement of his testimony. The board shall make a record of the proceeding, which shall include the application, any written statements of witnesses, a summary of statements of all witnesses, the findings and decisions of the board, and the rationale of the decision. The board shall make its determination within thirty (30) days from the hearing. If the board fails to act within such time, the application shall be deemed approved. Within forty-eight (48) hours of its determination, the board shall notify the applicant and the commissioner of such determination and if the board has not made a determination it shall notify the applicant and the commission that thirty (30) days has passed and that the application is deemed approved. The board shall transmit a copy of the permit to the commissioner. If the board's decision is reviewed or appealed then the board shall transmit the record of its hearing to the commissioner. Upon a final determination by the commissioner, the record shall be returned to the board. The record shall be open for inspection at the office of the bureau of environmental services in the department of city planning and codes administration. (Ord. No. 37,012, § 1, 9-29-92)

Sec. 49-26. Bonding requirements.

The board may require a reasonable bond or letter of credit in an amount and with surety and conditions satisfactory to it securing to the commonwealth compliance with the conditions and

limitations set forth in the permit. The board may, after hearing as provided herein, suspend or revoke a permit if the board finds that the applicant has failed to comply with any of the conditions or limitations set forth in the permit or has exceeded the scope of work as set forth in the application. The board, after hearing, may suspend a permit if the applicant fails to comply with the terms and conditions set forth in the application. (Ord. No. 37,012, § 1, 9-29-92)

Sec. 49-27. Review procedure.

(a) In deciding whether to grant, grant in modified form, or deny a permit, the board shall consider the following:

- (1) The testimony of any person in support of or in opposition to the permit application;
- (2) The impact of the proposed development on the public health, safety, and welfare; and
- (3) The proposed development's conformance with standards prescribed in section 28.2-1408 of the Code of Virginia and guidelines promulgated pursuant to section 28.2-1401 of the Code of Virginia.

(b) The board shall grant the permit if all of the following criteria are met:

- (1) The anticipated public and private benefit of the proposed activity exceeds its anticipated public and private detriment.
- (2) The proposed development conforms with the standards prescribed in section 28.2-1408 of the Code of Virginia and guidelines promulgated pursuant to section 28.2-1401 of the Code of Virginia.
- (3) The proposed activity does not violate the purposes and intent of this article or chapter 14 (§ 28.2-1400 et seq.) of title 28.2 of the Code of Virginia.

(c) If the board finds that any of the criteria listed in subsection (b) of this section are not met, the board shall deny the permit application but allow the applicant to resubmit the application in modified form.

the permit shall be transmitted to the commissioner.

(Ord. No. 37,012, § 1, 9-29-92)

Sec. 49-29. Expiration date and extensions.

No permit shall be granted without an expiration date, and the board, in the exercise of its discretion, shall designate an expiration date for

Sec. 49-28. Permit; form.

The permit shall be in writing, signed by the chairman of the board or his designated representative, and notarized. A copy of the permit shall be transmitted to the commissioner.

(Ord. No. 37,012, § 1, 9-29-92; Ord. No. 37,779, § 1, 10-11-94)

Sec. 49-29. Expiration date and extensions.

No permit shall be granted without an expiration date, and the board, in the exercise of its discretion, shall designate an expiration date for completion of such work specified in the permit for the date the board granted such permit. The board, however, may, upon proper application therefor, grant extensions.

(Ord. No. 37,012, § 1, 9-29-92)

Sec. 49-30. Permits; effect on zoning.

No permit granted by the board shall affect in any way the applicable zoning and land use ordinances of the city or the right of any person to seek compensation for any injury in fact incurred by him because of the permitted activity.

(Ord. No. 37,012, § 1, 9-29-92)

Sec. 49-31. Investigations and prosecutions.

The wetlands board shall have the authority to investigate all projects whether proposed or ongoing which alter coastal primary sand dunes located within the city. The wetlands board shall have the power to prosecute all violations of any order, rule or regulation of the board, or any violation of any provision of chapter 14 of title 28.2 of the Code of Virginia or of this article.

(Ord. No. 37,012, § 1, 9-29-92)

Sec. 49-32. Violation of orders, rules and regulations.

Any person who knowingly, intentionally, negligently or continually violates any order, rule or regulation of the commission or of the wetlands board or violates any provision of title 28.2, chapter 14, of the Code of Virginia or of the provisions contained in this article, or any provision of a permit granted by the wetlands board or the commission pursuant to chapter 14 of title 28.2 of

the Code of Virginia or this article shall be guilty of a class 1 misdemeanor. Following a conviction, every day the violation continues shall be deemed a separate offense.

(Ord. No. 37,012, § 1, 9-29-92)

Sec. 49-33. Injunctions.

In addition to and notwithstanding the provisions of chapter 14 of title 28.2 of the Code of Virginia and the provisions of section 49-32 of this article, upon petition of the wetlands board to the circuit court of the city, the court may enjoin such unlawful act and may order the person so acting unlawfully to take such steps as are necessary to restore, protect and preserve the coastal primary sand dunes involved.

(Ord. No. 37,012, § 1, 9-29-92)

ARTICLE IV. EROSION ADVISORY COMMISSION

Sec. 49-34. Creation; composition, appointment and compensation of members.

Pursuant to the provisions of section 10.1-711 of the Code of Virginia, 1950, as amended, there is hereby created a commission to be known as the erosion advisory commission, which shall consist of seven (7) members who shall be citizens of the city, shall be appointed by the council, and shall serve as such without compensation.

(Ord. No. 36,882, § 2, 6-23-92)

Sec. 49-35. Terms of members, appointment and vacancies.

The wetlands board established in section 49-4 of this code shall also constitute the erosion advisory commission and all requirements pertaining to the appointment and terms of the wetlands board shall apply to the erosion advisory commission.

(Ord. No. 36,882, § 2, 6-23-92)

Sec. 49-36. Duties.

The erosion advisory commission shall have the duties that are set forth in section 10.1-711 of the Code of Virginia, 1950, as amended, and shall

act in an advisory capacity to the director of the department of city planning and codes administration on the following:

- (1) Determination of erosion problems on city beaches.
 - (2) Determination of erosion control strategies.
 - (3) Assessment of erosion control program implementation.
 - (4) Participation in grant application procedures as may be required by the Virginia Board on Conservation and Development of Public Beaches.
- (Ord. No. 36,882, § 2, 6-23-92)

Sec. 49-37. Chairperson; meetings, quorum.

The erosion advisory commission shall elect a chairperson from its membership who shall serve one year terms as such and may succeed himself or herself. Four (4) members of the commission shall constitute a quorum for the transaction of business.

(Ord. No. 36,882, § 2, 6-23-92)